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TRANSCRIPT OF PROCEEDINGS

O/N 109734

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER J.P. McALPINE

T No 13450 of 2009

LEGAL PRACTITIONERS AND APPRENTICE-AT-LAW AWARD

**Application pursuant to section 23(2)(b) of the
Industrial Relations Act 1984 lodged by the
Minister administering the State Service Act 2000
to vary the above award re deletion of all
existing provisions and replace them with
new contemporary provisions**

HOBART

9.30 AM, THURSDAY, 25 JUNE 2009

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THE COMMISSIONER: Can I have appearances, please?

MR P. BAKER: Commissioner, I appear on behalf of the applicant. P. Baker.

5 MR M. JOHNSTON: If it please the Commission, Mat Johnston and LYN SAUNDERS, appearing on behalf of the Community and Public Sector Union (State Public Services Federation Tasmania) Inc.

THE COMMISSIONER: You're on leave.

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MR JOHNSTON: Yes, I am.

THE COMMISSIONER: That's dedication for you. Mr Baker, over to you, I take it.

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MR BAKER: Thank you, sir. I'm not sure whether there's too much I needed to sort of add since we've actually canvassed all this in an earlier matter before the commission. What we are seeking to do is to actually take the Legal Practitioners Agreement, the current agreement, the 2005 agreement, and insert that into what is known as the Legal Practitioners and Apprentice-at-Law Award, to bring that award basically into the 21st Century, to place into it the classifications and definitions and salaries that arise out of that agreement. There is a catch-all clause at clause 15, General Conditions of Employment. Unless otherwise prescribed by this award all conditions of employment are to be determined by the Tasmanian State Service Award, as varied from time to time.

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So, sir, apart from the conditions that appear in this award, all conditions of employment are to be derived from the Tasmanian State Service Award. I have spoken to Mr Johnston prior to the start of these proceedings today, and have indicated that if there is any clause which – or phrase which we may have inadvertently removed as a result of converting the agreement into a current award, that provision will stand, it will be observed by the agency, and in the appropriate time obviously the award will be amended to reflect that. So if there is any unintended consequences, which I think was the phrase used, to the Tasmanian State Service Award it will be addressed by the agency in good faith.

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THE COMMISSIONER: Okay. So just for my clarity then, the existing Legal Practitioners and Apprentice-at-Law Award will basically be a back-up document until you're satisfied everything has gone across; is that right? Is that what you're saying?

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MR BAKER: Well, what we're trying to do – one of the things that we will do is, if you like, modernising - - -

45 THE COMMISSIONER: No, no, I understand what you're doing.

MR BAKER: Yes.

THE COMMISSIONER: But the comment you made that should you have inadvertently transferred something across that doesn't truly reflect what it was before, what it was before is what we're going to - - -

5 MR BAKER: What's in the agreement, yes, sir.

THE COMMISSIONER: The current agreement. Right.

MR BAKER: Yes.

10

THE COMMISSIONER: Fine. Okay. I understand.

MR BAKER: Now, I understand – and the operative date would be by - from decision of today's date. We say that it conforms with the wage fixing principles, as
15 enunciated by the commission in its 2008 decision, Full Bench decision of the commission 2008, and that it does not offend section 36, that is, the public interest test. With those comments, sir, I would close my submission there, and ask that the award be varied in the manner as presented by the exhibit - - -

20 THE COMMISSIONER: Thank you.

MR BAKER: - - - or the draft order, I beg your pardon.

THE COMMISSIONER: Thank you.

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MR JOHNSTON: Commissioner, thank you very much. Look, it's with – and for the record of historical reference – it's with some reservations that we find ourselves in the position where we have to consent to this matter on short notice. While there has been talk this morning of unforeseen consequences, etcetera, the likelihood of
30 unforeseen consequences arises, due to the haste, and the necessity of the amendment to this award.

I don't believe that there will be anything out of the unamended Legal Practitioners and Apprentice-at-Law Award which will still apply, it being such a dated document.
35 However, I would reiterate for the commission that should there be anything that has been accidentally omitted from the transition from the agreement to the award, then those things should be, at first, administratively applied, but, secondly, put into the award by consent at a later date, as soon as possible.

40 I think we've come to this position with some – in a situation that has been a little non-standard, in terms of the employers' decision to retire from a registered industrial agreement without adequate underpinning in an existing award, and also without any genuine consultation. Be it mandated by an interpretation of the award of the TSSA or just by general good industrial practice, we find ourselves in a
45 position where our members, as of tomorrow, when the Legal Practitioners Agreement ceases to exist for all intents and purposes, that our members, should we

not consent to this matter, would have basically no conditions of employment, or wage rates to fall back on.

5 That is not an ideal situation within which to conduct any industrial processes, and
look, it's with those reservations that I can say to the commission that it does, from
what we have seen in the brief time that we've had the document, satisfy the wage
fixing principles as set by the commission, and also it doesn't offend against the
public interest. But, as I've said, for historical record, I think it needs to be put on
10 the table that this amendment was not done in what I would consider good industrial
practice, and that, while it appears to satisfy the interests of the parties at this stage, I
would encourage the Government to engage more fully with employee parties, and
public sector unions in their conduct into the future. Thank you.

15 THE COMMISSIONER: Thank you. Okay. Well, since you are, in reaching
agreement, albeit forced hand, and I think – although my decision didn't go your way
the other day, I put into it as much as I could of it, what I thought the unfairness of
this was. And you're right: if you didn't agree to this, after tomorrow there was
nothing. So, yes, I'm comfortable to approve this. I agree it doesn't offend the wage
fixing principles, and it's certainly in line with public interest, and the interests,
20 obviously, of your members. Look, that's it, and it takes effect as of today, from
today onwards. Okay. I'll adjourn. Thank you.

MATTER ADJOURNED at 9.40 am INDEFINITELY